



CITY COUNCIL AGENDA REPORT

MEETING DATE: DECEMBER 6, 2005

ITEM NUMBER:

SUBJECT: NORTH COSTA MESA HIGH RISE RESIDENTIAL EIR CONTRACT (EIR NO. 1052)

DATE: NOVEMBER 29, 2005

FROM: DEVELOPMENT SERVICES DEPARTMENT/PLANNING DIVISION

PRESENTATION BY: CLAIRE L. FLYNN, AICP, SENIOR PLANNER

**FOR FURTHER INFORMATION CONTACT: CLAIRE L. FLYNN, AICP, SENIOR PLANNER
(714) 754-5278**

RECOMMENDATION:

1. Award an environmental consulting contract to Culbertson, Adams, and Associates, Inc. at 85 Argonaut, Suite 220, Aliso Viejo, California, in the amount of **\$391,094**.
2. Authorize the Mayor to sign the Professional Services Agreement.

BACKGROUND:

Within the past two years, City Council has approved five General Plan screening requests for high-rise residential developments from major landowners in north Costa Mesa: Orange County Performing Arts Center, Segerstrom & Sons, Fifield Properties, Maguire Properties and Sakioka/Stockbridge/South Coast Metro entities. The proposed high rises are all located less than a mile of each other, and for the most part, substitute existing or unbuilt entitlements. These proposed high rise residential projects will be processed in a single, comprehensive environmental impact report.

On November 9, 2005, the Development Services Department issued a request for proposals to three environmental consulting firms (i.e. Ultrasystems, URS Corporation, and Culbertson Adams & Associates) for the preparation of a Master EIR. These firms have been selected due to the caliber of their technical staff, environmental documents, and relevant experience with high-rise residential development. EDAW, Inc. and Jones & Stokes, Inc. declined the invitation to participate in the RFP process due to other project commitments.

On November 18, 2005, the three firms were interviewed by Planning staff. The Developer's representatives were also present to observe the proceedings.

ANALYSIS:

Environmental Contract Award

While each firm submitted competitive proposals, staff believes that Culbertson Adams Associates, Inc. was the most qualified firm to prepare the environmental document due to the following:

- **Demonstrated relevant experience with high-rise residential development in Orange County.** Culbertson Adams, Inc. recently completed the MacArthur Place South EIR for proposed high rise residential towers by Nexus Development in the City of Santa Ana. Their successful experience with completing a certified environmental impact report, which analyzed the complexity and magnitude of high rise residential towers, is directly applicable to Costa Mesa.
- **Highly qualified technical environmental staff and subconsultants.** The project team members are experienced environmental analysts with 15+ years experience in the preparation of environmental impact reports. This team includes Andi Culbertson, Principal, who not only has extensive experience with working with the Airport Land Use Commission and other state/federal agencies, but she is also a pilot and land use attorney familiar with technical issues related to high rise residential development. In addition, Austin-Foust, Inc. and Wieland Associates are industry leaders in traffic and noise analysis.
- **Excellent responses during interview and comprehensive proposal.** Due to the recency and relevancy of their previous high-rise EIR experience, Culbertson Adams staff most effectively communicated important issues during the interview compared to the two other firms. The staff elaborated on experience gained from working with the Airport Land Use Commission, Cities of Tustin and Santa Ana, and the community. These positive working relationships will be critical to this EIR process.
- **Applicants' representatives supported the consultant selection.** City staff is solely responsible for making recommendations to City Council for awarding the consultant contract. The applicants' representatives have also expressed their support of this firm for the contract award as well as their participation in this EIR process (see applicant letters, Attachment 3). The five property owners will be sharing equally in the total cost of the environmental contract, plus the City's 10 percent administration fee.

ALTERNATIVES CONSIDERED:

1. Approve environmental contract. The five applicants support the consultant selection, and the approval of the contract award would allow the environmental analysis to proceed immediately.
2. The alternative to this Council action would be to reject all proposals. If all the proposals are rejected, the City is required to reinitiate the RFP process. This will delay the preparation of the environmental document and entitlement process for these projects.

FISCAL REVIEW:

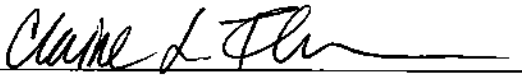
Fiscal review is not required for this project. The environmental contract expenses and the City's 10 percent administration fee will be borne by the developers. These costs will be evenly divided among the five applicants; thus, each developer will be responsible for 20 percent of the EIR costs.

LEGAL REVIEW:

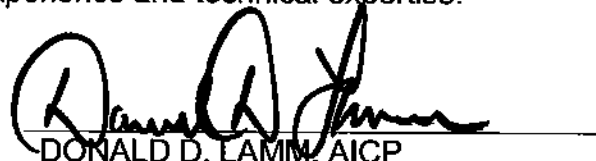
The City Attorney's office has reviewed the attached Professional Services Agreement and approved it as to form.

CONCLUSION:

Staff recommends that Culbertson Adams Associates, Inc. be awarded the environmental consulting contract for the preparation of a Master Environmental Impact Report for the North Costa Mesa high rise developments. Through a competitive selection process, staff believes that this firm is the most qualified to complete the work in a comprehensive and timely manner, based on their relevant experience and technical expertise.



CLAIRE L. FLYNN, AICP
Senior Planner



DONALD D. LAMM, AICP
Deputy City Mgr./Dev. Svcs. Director

DISTRIBUTION: City Manager
City Attorney
Public Services Director
City Clerk (2)
Staff (4)
File (2)
Applicants (5)

ATTACHMENTS: 1. Professional Services Agreement
2. Purchase Requisition
3. Applicant Letters

Attachment 1
Professional Services Agreement

PROFESSIONAL SERVICES AGREEMENT FOR ENVIRONMENTAL CONSULTING

THIS AGREEMENT is made and entered into this 6th day of December, 2005 ("Effective Date"), by and between the CITY OF COSTA MESA, a municipal corporation ("City"); and Culbertson, Adams, and Associates, a California corporation, ("Consultant"); and Maguire Properties-Pacific Arts Plaza, LLC; Stockbridge/MCC-South Coast, LLC, J.K. Sakioka, Company and AMS Craig, LLC; The Fifield Companies; South Coast Plaza; and Orange County Performing Arts Center (Collectively, "Applicants").

W I T N E S S E T H :

A. WHEREAS, City and Applicants propose to have Consultant prepare a comprehensive environmental analysis for the North Costa Mesa High Rise Residential Projects as described herein below; and

B. WHEREAS, Consultant represents that it has that degree of specialized expertise contemplated within California Government Code, Section 37103, and holds all necessary licenses to practice and perform the services herein contemplated; and

C. WHEREAS, City, Applicants and Consultant desire to contract for specific services in connection with the project described below (the "Project") and desire to set forth their rights, duties and liabilities in connection with the services to be performed; and

D. WHEREAS, no official or employee of City has a financial interest, within the provisions of California Government Code, Sections 1090-1092, in the subject matter of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1.0. SERVICES PROVIDED BY CONSULTANT

1.1. Scope of Services. Consultant shall provide the professional services described in the City's Request for Proposal ("RFP") attached hereto as Exhibit "A" and incorporated herein by reference and Consultant's Response to City's RFP (the "Response"). A copy of said Response is attached hereto as Exhibit "B" and incorporated herein by this reference.

1.2. Professional Practices. All professional services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced in their respective fields and in a manner consistent with the standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields and circumstances in accordance with sound professional practices. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Consultant's performance of this Agreement.

1.3. Warranty. Consultant warrants that it shall perform the services required by this Agreement in compliance with all applicable Federal and California employment laws including, but not limited to, those laws related to minimum hours and wages; occupational health and

safety; fair employment and employment practices; workers' compensation insurance and safety in employment; and all other Federal, State and local laws and ordinances applicable to the services required under this Agreement. Consultant shall indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability under any of the above-mentioned laws, which may be incurred by reason of Consultant's performance under this Agreement.

1.4. Non-discrimination. In performing this Agreement, Consultant shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code. Violation of this provision may result in the imposition of penalties referred to in Labor Code, Section 1735.

1.5. Non-Exclusive Agreement. Consultant acknowledges that City may enter into agreements with other consultants for services similar to the services that are subject to this Agreement or may have its own employees perform services similar to those services contemplated by this Agreement.

1.6. Delegation and Assignment. This is a personal service contract, and the duties set forth herein shall not be delegated or assigned to any person or entity without the prior written consent of City. Consultant may engage a subcontractor(s) as permitted by law and may employ other personnel to perform services contemplated by this Agreement at Consultant's sole cost and expense.

2.0. COMPENSATION AND BILLING

2.1. Compensation. Applicants shall pay Consultant in accordance with the fee schedule set forth in Exhibit "C," attached hereto and made a part of this Agreement (the "Fee Schedule"). Consultant's compensation shall in no case exceed three hundred ninety-one thousand ninety four dollars (\$391,094), one hundred percent (100%) of which shall be paid by Applicants. Each of the five (5) Applicants named herein shall pay twenty percent (20%) of the total amount due to Consultant. City shall not be responsible for payment of any services provided under this Agreement.

2.2. Additional Services. Consultant shall not receive compensation for any services provided outside the scope of services specified in the Response unless the City or the Project Manager for this Project, prior to Consultant performing the additional services, approves such additional services in writing. It is specifically understood that oral requests and/or approvals of such additional services or additional compensation shall be barred and are unenforceable.

2.3. Method of Billing. Consultant may submit invoices to City's Project Manager for approval on a progress basis, but no more often than monthly. Said invoice shall be based on the total of all Consultant's services which have been completed to City's sole satisfaction. City shall pay Consultant's invoice within forty-five (45) days from the date City receives said invoice. Each invoice shall describe in detail, the services performed and the associated time for completion. Any additional services approved and performed pursuant to this Agreement shall

be designated as "Additional Services" and shall identify the number of the authorized change order, where applicable, on all invoices.

2.4. Records and Audits. Records of Consultant's services relating to this Agreement shall be maintained in accordance with generally recognized accounting principles and shall be made available to City or its Project Manager for inspection and/or audit at mutually convenient times for a period of three (3) years from the Effective Date.

3.0. TIME OF PERFORMANCE

3.1. Commencement and Completion of Work. The professional services to be performed pursuant to this Agreement shall commence within five (5) days from the Effective Date of this Agreement. Said services shall be performed in strict compliance with the Project Schedule approved by City as set forth in Exhibit "D," attached hereto and incorporated herein by this reference. The Project Schedule may be amended by mutual agreement of the parties. Failure to commence work in a timely manner and/or diligently pursue work to completion may be grounds for termination of this Agreement.

3.2. Excusable Delays. Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

4.0. TERM AND TERMINATION

4.1. Term. This Agreement shall commence on the Effective Date and continue for a period of one (1) year, ending on December 31, 2006, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

4.2. Notice of Termination. The City reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this Agreement, with or without cause, at any time, by providing written notice to Consultant. The termination of this Agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Consultant shall immediately stop rendering services under this Agreement unless directed otherwise by the City.

4.3. Compensation. In the event of termination, Applicants shall pay Consultant for reasonable costs incurred and professional services satisfactorily performed up to and including the date of City's written notice of termination. Compensation for work in progress shall be prorated as to the percentage of work completed as of the effective date of termination in accordance with the fees set forth herein. In ascertaining the professional services actually rendered hereunder up to the effective date of termination of this Agreement, consideration shall be given to both completed work and work in progress, to complete and incomplete drawings, and to other documents pertaining to the services contemplated herein whether delivered to the City or in the possession of the Consultant.

4.4. Documents. In the event of termination of this Agreement, all documents

prepared by Consultant in its performance of this Agreement including, but not limited to, finished or unfinished design, development and construction documents, data studies, drawings, maps and reports, shall be delivered to the City within ten (10) days of delivery of termination notice to Consultant, at no cost to City. Any use of uncompleted documents without specific written authorization from Consultant shall be at City's sole risk and without liability or legal expense to Consultant.

5.0. INSURANCE

5.1. Minimum Scope and Limits of Insurance. Consultant shall obtain and maintain during the life of this Agreement all of the following insurance coverages:

- (a) Comprehensive general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.
- (b) Automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.
- (c) Workers' compensation insurance as required by the State of California.
- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

5.2. Endorsements. The comprehensive general liability insurance policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, agents, and employees are additional insureds with respect to this subject project and contract with City."
- (b) Notice: "Said policy shall not terminate, nor shall it be cancelled, nor the coverage reduced, until thirty (30) days after written notice is given to City."
- (c) Other insurance: "Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."

5.3. Certificates of Insurance: Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement.

5.4. Non-limiting: Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

6.0. GENERAL PROVISIONS

6.1. Entire Agreement: This Agreement constitutes the entire Agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

6.2. Representatives. The City Manager or his designee shall be the representative of City for purposes of this Agreement and may issue all consents, approvals, directives and agreements on behalf of the City, called for by this Agreement, except as otherwise expressly provided in this Agreement.

Consultant shall designate a representative for purposes of this Agreement who shall be authorized to issue all consents, approvals, directives and agreements on behalf of Consultant called for by this Agreement, except as otherwise expressly provided in this Agreement.

6.3. Project Managers. City shall designate a Project Manager to work directly with Consultant in the performance of this Agreement.

Consultant shall designate a Project Manager who shall represent it and be its agent in all consultations with City during the term of this Agreement. Consultant or its Project Manager shall attend and assist in all coordination meetings called by City.

Applicants shall designate a Project Manager to work directly with City and Consultant in the performance of this Agreement.

6.4. Notices: Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO CONSULTANT:

IF TO CITY:

City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Fax: 714-754-4856
Tel: 714-754-5278
Attn: Claire Flynn

IF TO APPLICANT:

Maguire Properties-
Pacific Arts Plaza, LLC
333 South Grand Avenue, Suite 400
Los Angeles, CA 90071
Phone: 213-626-3300
Fax: 213-687-4758
Attn: Mark Lammas

IF TO APPLICANT:

Stockbridge/MCC – South Coast, LLC,
J.K. Sakioka, Co. and AMS Craig, LLC
199 First Street, Suite 200
San Francisco, CA 94105
Phone: 415-905-5355
Fax: 415-905-5360
Attn: George Sakioka

IF TO APPLICANT:

The Fifield Companies
2010 Main Street, Suite 610
Irvine, CA 92614
Phone: 949-75208700
Fax: 949-752-0113
Attn: Tim O'Brien

IF TO APPLICANT:

South Coast Plaza
3315 Fairview Road
Costa Mesa, CA 92626
Phone: 714-546-0110
Fax: 714-546-9835
Attn: Paul Freeman

IF TO APPLICANT: OCPAC

Orange County Performing Arts Center
600 Town Center Drive
Costa Mesa, CA 92626
Phone: 714-556-2121 X 4223
Fax: 714-755-7807
Attn: Paul Freeman

6.5. Drug-free Workplace Policy. Consultant shall provide a drug-free workplace by complying with all provisions set forth in City's Council Policy 100-5, attached hereto as Exhibit "E" and incorporated herein by reference. Consultant's failure to conform to the requirements set forth in Council Policy 100-5 shall constitute a material breach of this Agreement and shall be cause for immediate termination of this Agreement by City.

6.6. Attorneys' Fees: In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms,

conditions, or provisions hereof.

6.7. Governing Law: This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

6.8. Assignment: Consultant shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Consultant's interest in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Consultant of Consultant's obligation to perform all other obligations to be performed by Consultant hereunder for the term of this Agreement.

6.9. Indemnification and Hold Harmless: Consultant shall protect, defend, indemnify and hold harmless City and its elected and appointed officials, officers, and employees from any and all claims, liabilities, expenses, including attorney fees, damage to property or injuries to or death of any person or persons or damages of any nature including, but not by way of limitation, all civil claims or workers' compensation claims arising out of or in any way connected with the intentional or negligent acts, error or omissions of Consultant, its employees, agents or subcontractors in the performance of this Agreement.

6.10. Independent Contractor: Consultant is and shall be acting at all times as an independent contractor and not as an employee of City. Consultant shall secure, at his expense, and be responsible for any and all payment of Income Tax, Social Security, State Disability Insurance Compensation, Unemployment Compensation, and other payroll deductions for Consultant and its officers, agents, and employees, and all business licenses, if any are required, in connection with the services to be performed hereunder.

6.11. Ownership of Documents: All findings, reports, documents, information and data including, but not limited to, computer tapes or discs, files and tapes furnished or prepared by Consultant or any of its subcontractors in the course of performance of this Agreement, shall be and remain the sole property of City. Consultant agrees that any such documents or information shall not be made available to any individual or organization without the prior consent of City. Any use of such documents for other projects not contemplated by this Agreement, and any use of incomplete documents, shall be at the sole risk of City and without liability or legal exposure to Consultant. City shall indemnify and hold harmless Consultant from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from City's use of such documents for other projects not contemplated by this Agreement or use of incomplete documents furnished by Consultant. Consultant shall deliver to City any findings, reports, documents, information, data, in any form, including but not limited to, computer tapes, discs, files audio tapes or any other Project related items as requested by City or its authorized representative, at no additional cost to the City.

6.12. Public Records Act Disclosure: Consultant has been advised and is aware that all reports, documents, information and data including, but not limited to, computer tapes, discs or

files furnished or prepared by Consultant, or any of its subcontractors, and provided to City may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 et. seq.). Exceptions to public disclosure may be those documents or information that qualify as trade secrets, as that term is defined in the California Government Code Section 6254.7, and of which Consultant informs City of such trade secret. The City will endeavor to maintain as confidential all information obtained by it that is designated as a trade secret. The City shall not, in any way, be liable or responsible for the disclosure of any trade secret including, without limitation, those records so marked if disclosure is deemed to be required by law or by order of the Court.

6.13. Responsibility for Errors. Consultant shall be responsible for its work and results under this Agreement. Consultant, when requested, shall furnish clarification and/or explanation as may be required by the City's representative, regarding any services rendered under this Agreement at no additional cost to City. In the event that an error or omission attributable to Consultant occurs, then Consultant shall, at no cost to City, provide all necessary design drawings, estimates and other Consultant professional services necessary to rectify and correct the matter to the sole satisfaction of City and to participate in any meeting required with regard to the correction.

6.14. Prohibited Employment: Consultant will not employ any regular employee of City while this Agreement is in effect.

6.15. Order of Precedence: In the event of an inconsistency in this Agreement and any of the attached Exhibits, the terms set forth in this Agreement shall prevail.

6.16. Costs: Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

6.17. No Third Party Beneficiary Rights: This Agreement is entered into for the sole benefit of City and Consultant and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

6.18. Headings: Paragraphs and subparagraph headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

6.19. Construction: The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

6.20. Amendments: Only a writing executed by the parties hereto or their respective successors and assigns may amend this Agreement.

6.21. Waiver: The delay or failure of either party at any time to require performance or compliance by the other of any of its obligations or agreements shall in no way be deemed a waiver of those rights to require such performance or compliance. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver.

6.22. Severability: If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party is materially impaired, which determination as made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

6.23. Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

6.24. Corporate Authority: The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so, the parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF COSTA MESA,
A municipal corporation

Mayor of the City of Costa Mesa

Date: _____

CONSULTANT

Signature

Date: _____

Name and Title

Social Security or Taxpayer ID Number

MAGUIRE PROPERTIES-PACIFIC ARTS PLAZA, LLC

Signature

Date: _____

Name and Title

Social Security or Taxpayer ID Number

STOCKBRIDGE/MCC – SOUTH COAST, LLC, J.K. SAKIOKA COMPANY and
AMS CRAIG, LLC

Signature

Date: _____

Name and Title

Social Security or Taxpayer ID Number

THE FIFIELD COMPANIES

Signature

Date: _____

Name and Title

Social Security or Taxpayer ID Number

SOUTH COAST PLAZA

Signature

Date: _____

Name and Title

Social Security or Taxpayer ID Number

ORANGE COUNTY PERFORMING ARTS CENTER (OCPAC)

Signature

Date: _____

Name and Title

Social Security or Taxpayer ID Number

ATTEST:

Deputy City Clerk and ex-officio Clerk
of the City of Costa Mesa

APPROVED AS TO FORM:

City Attorney

Date: _____

APPROVED AS TO CONTENT:

Project Manager

Date: _____

APPROVED AS TO INSURANCE:

Risk Management

Date: _____

EXHIBIT A

CITY'S REQUEST FOR PROPOSAL



**Due: Thursday,
November 17, 2005, by 12 NOON**

REQUEST FOR PROPOSAL

*Environmental Consulting Services for Master EIR
for North Costa Mesa High Rise Residential Projects*

INTRODUCTION

Five major landowners in north Costa Mesa have expressed interest in incorporating high rise residential uses in the South Coast Metro area located east of Bristol Street, between the San Diego Freeway and Sunflower Avenue. Rather than consider these projects individually, the City Council has directed staff to prepare a comprehensive policy and environmental analysis of all potential projects.

The City of Costa Mesa invites you to submit a scope of work for environmental consulting services for the above-referenced comprehensive environmental analysis. The Consultant will be responsible for the following: (1) preparation of a Master EIR and all related CEQA related documents/studies (Notice of Preparation, Responses to Comments, traffic studies, air quality studies, etc.), (2) technical assistance related to Airport Land Use Commission review/approval of proposed project, (3) meeting participation at Planning Commission/City Council/ALUC public hearings. The project description and a sample professional services agreement are attached for your review (Attachments 1 and 4). Please submit the required insurance certificates as described in the professional services agreement immediately for the City Attorney's office for review.

CRITICAL SUCCESS FACTORS/KEY POINTS

Competitive proposals will exhibit the following "critical success factors:"

- **Proposal serves as a complete "scope of services."** The scope of work will be attached to the Professional Services Agreement. This document will not emphasize the Consultant qualifications but rather provide a detailed description of the work activity:
 - Task Description
 - Project Deliverables
 - Fees by line-item (direct costs and reimbursables)
 - SubConsultants

Due to the short turnaround to select a Consultant and prepare the Professional Services Agreement, the Consultant's proposal should be as complete as possible.

- **One key staff member has 100% time commitment to preparation and delivery of the Master EIR.** To achieve the ambitious timeline as requested by the Developers, the City is hoping for an environmental consulting firm that is able to commit at least one staff member on a full-time basis throughout the environmental process. For instance, the targeted deadline for the NOP is early January and the delivery of the screencheck Master EIR is slated for mid-March, 2006. An environmental analyst with 100% time commitment to this project will ensure timely deliverables within this timeframe.

Project Budget will be as comprehensive as possible to realistically address the needs of this project.

PROJECT BUDGET (\$200,000 BALLPARK ESTIMATE ONLY)

A specific budget has not been identified at this time. While a reasonable budget is important, there are special considerations (e.g. accelerated project delivery date, aggressive time line, etc.) that are unique to this project. Thus, the City's focus is to select a high-caliber consultant who can deliver a high-quality environmental document in a timely manner. Given that the environmental cost will be divided between the five developers, the project budget will be based on the consultant's estimation.

CEQA documents in the City of Costa Mesa are detailed, public disclosure documents that may oftentimes go above and beyond the minimum requirements of the law. Consultants may sometimes underestimate the budget without understanding the community's high expectations of the contents of an EIR. The consultant should keep the following in mind:

- Please exercise some degree of latitude with estimating a realistic project budget that fully realizes the challenges of delivering the Master EIR that will be highly scrutinized.
- Please try to avoid proposing an unrealistic, skeleton budget that may invariably need to be amended later through contract change orders.
- Please be sure to include reimbursables, printing budget, and any other costs associated with this project. (All documents will be printed by Consultant.)
- Please include a 10% contingency should be added to the overall budget. The proposed budget should fully anticipate any unusual work activity associated with detailed Responses to Comments, multiple meeting attendance, etc. that would require funding. Not only should "unusual" circumstances be called-out as a separate task in the scope of services, a 10% contingency should be added to the overall budget. The scope of services should anticipate extensive work activity; thus, contract change orders are to be avoided to the fullest extent possible.
- Please include subconsultants in the proposal. Only preliminary traffic/parking studies have been completed. All required technical studies (traffic, air quality, noise, shade/shadow, etc.) will need to be completed by the Consultant.

The five developers will be sharing the costs of the Master EIR and will expect a reasonable budget. However, please keep in mind that these unique challenges may require additional project hires, staff time or other resource considerations that should be included in the proposed project budget. The priority is to deliver a quality, user-friendly, legally-defensible document and be sensitive to the timeline—although it can be adjusted within reason.

- **Insurance Certificates to preapproved and submitted immediately.** The City Attorney will need to confirm adequate insurance coverage immediately. (See insurance requirements in Attachment 3.) Please fax certificates to: Claire Flynn, Senior Planner, at (714) 754-4856.
- **Consultant interviews scheduled for November 18, 2005.** Please contact Claire to set-up a meeting time.

SCOPE OF WORK

TASK 1 – PROJECT INITIATION

Consultant will attend a kick-off meeting with the applicants' project teams and City staff to discuss the project and the proposed scope of work. Consultant will identify data needs, project objectives, and ensure that deliverables are consistent with the overall project timeline.

Deliverable

Kick-off meeting

TASK 2—NOTICE OF PREPARATION/INITIAL STUDY

Consultant will work with City staff and the applicants to prepare a master project description for all five high rise residential proposals. The master description will articulate the proposed development activity, the overall objectives for development of the site, and any other pertinent information. Information provided by the applicants will be the basis for the project master description.

Consultant will prepare a draft Notice of Preparation (NOP), Initial Study (IS), and distribution list for review and comment by the City of Costa Mesa. All conclusions and substantiating information will be documented in the NOP/IS. Consultant will finalize and distribute the IS/NOP by certified mail to all responsible, trustee, and interested agencies, community groups, and individuals.

The City expects the following environmental topics/EIR sections to be of major focus:

- Traffic/Circulation
- Noise
- Air Quality
- Land Use (including Airport Land Use Commission Consistency Determination)
- Public Services/Utilities
- Hydrology/Water Quality
- Growth Inducing Impacts
- Cumulative Impacts

Deliverable

Notice of Preparation/Initial Study

Circulated documents to Distribution List

TASK 3—PREPARE 1st SCREENCHECK EIR

Consultant will prepare the environmental impact evaluation for the Screencheck EIR based upon the NOP/IS and responses received, community and agency input, and technical evaluation of the proposed project. The final master project description and EIR project alternatives will be provided to the City and applicants for review and approval prior to completion of the screencheck EIR. This process provides the City and applicants with an opportunity to clarify any project issues prior to the technical analysis being initiated. Please note: Consultant will prepare and submit a complete Screencheck Master EIR (e.g. Executive Summary, Growth Inducing Impacts section, Cumulative Impacts section, Reasonable and Foreseeable Projects section, and Project Alternatives.) and will receive comments on the Master EIR from the City. City staff will not prepare any EIR sections but will provide to the Consultant any required information to complete the analysis. If staff comments are extensive, a 2nd screencheck EIR submittal may need to be provided. Otherwise, only a second review of major sections will be requested. An additional review cycle of a 2nd screencheck document should be budgeted in the case it is needed.

Deliverable
Screencheck EIR

TASK 4—PREPARE PROOFCHECK DRAFT EIR

Upon receipt of the City's and applicants' comments on the screencheck EIR submittal, Consultant will make revisions and resubmit the document as a PROOFCHECK EIR. A proofcheck EIR is the final print copy of the EIR before printing. No major comments on the document are anticipated from City staff at this level of the review.

Deliverable
Proofcheck EIR on Draft EIR

TASK 5—PREPARE DRAFT EIR

The proofcheck document with any revisions requested by City staff will serve as the Draft EIR. Consultant will prepare and distribute copies of the draft EIR to the State Clearinghouse and local community groups, local agencies, surrounding jurisdictions, etc. Consultant will prepare and distribute ALL required CEQA notices for this project (i.e. the Notice of Completion, Notice of Availability, etc.). The City of Costa Mesa will only be responsible for newspaper notices.

Deliverable

Draft EIR
And CEQA Notices

TASK 6—PREPARE RESPONSES TO COMMENTS

The City's policy is to provide a thorough Responses to Comments document. The Responses to Comments document is expected to be very detailed and comprehensive. Upon receipt of written comments on the Draft EIR from the State Clearinghouse and other parties, Consultant will review all comments. Consultant will prepare written responses to comments that raise environmental issues. These responses will be provided as a separate Responses to Comments document. Upon receipt of the City's comments, Consultant will finalize the responses to comments. Responses to public agency comments will be mailed by Consultant. The scope of services should assume at least 120 hours required to prepare the responses to comments document.

Deliverable

Responses to Comments

TASK 7—PREPARE MITIGATION MONITORING PROGRAM

Per the CEQA Guidelines, Consultant will prepare a mitigation monitoring program (MMP) for review by Planning Commission and adoption by the City Council at the time of the CEQA findings. The MMP will be prepared at the same time as responses to comments. Consultant will coordinate with City staff to refine the format and the content of the MMP. If the Planning Commission and/or City Council modify the project and/or recommended conditions of approval/mitigation measures for the proposed project, Consultant will revise the MMP. These modifications should be assumed in the project budget.

Deliverable

Mitigation Monitoring Program

TASK 8—PREPARE STATEMENT OF FACTS/FINDINGS & STATEMENT OF OVERRIDING CONSIDERATIONS

Consultant will prepare draft findings of facts and findings and a draft statement of overriding considerations in accordance with the State CEQA Guidelines §15091 and 15093. Upon receipt of the City's and applicants' comments on these documents, copies will be submitted to the City for use by legislative body in its deliberations on the project. If the Planning Commission and/or City Council modify the project and/or recommended conditions of approval/mitigation measures for the proposed project, Consultant will revise the findings. These modifications should be assumed in the project budget.

Deliverable

Statement of Facts & Findings and Statement of Overriding Considerations

TASK 9— ASSIST WITH AIRPORT LAND USE COMMISSION CONSISTENCY DETERMINATION PROCESS

Consultant shall provide technical assist related to preparation of required items for the Airport Land Use Commission's review and consistency determination. This includes meeting attendance and coordination with ALUC staff.

Deliverable

Reports, Correspondence, Meeting Attendance

TASK 10 —PREPARE FINAL EIR

Upon the Planning Commission's recommendation of the Draft EIR for certification, Consultant shall prepare a final EIR pursuant to CEQA Guidelines Section 15090. The Final EIR is a compilation document inclusive of the following: the EIR as modified by public comments, EIR technical appendices, responses to comments.

Deliverable

Final EIR

Task 11 - ONGOING TASK - Project Management and Coordination

The scope should assume extensive interaction between the Consultant project team and the City's project team and requires frequent information sharing among project team members. This approach will assist in coordination efforts, decision-making, and data acquisition without requiring additional time or resources and will give City staff advance input on environmental findings. While the City can contact any team member at any time, at the onset of the project, Consultant will identify the key contact people. It is the responsibility of these individuals to know the status of various project components and to disseminate project information to appropriate team members. Limiting the individuals who initially receive project information reduces the potential for missed or ineffective communication.

TASK 12 — MEETING ATTENDANCE

Attendance at Meetings with City Staff- Consultant's project manager will be available to attend project meetings and teleconference meetings with staff on a frequent basis throughout the EIR process. Thus, it is necessary to establish 100% time commitment of at least one key staff member on the consultant team. Other members of the Consultant project team will be available, as needed, to attend these meetings within their established task budgets.

Airport Land Use Commission/Planning Commission/City Council Meetings/Study Sessions and Public Hearings- Principal in Charge will be available to make presentations concerning topical issues, analysis and findings of the EIR, as well as be available to answer questions or make specific presentations, as directed by City staff. The following meeting commitments (other than City staff meetings) are anticipated:

Planning Commission	1 study session, 2 public hearings
City Council	2 public hearings
Airport Land Use Commission	2 public hearings

Additional meetings and hearings can be can be attended on a time and materials basis subject to prior authorization by the City of Costa Mesa. Project budget should include a place holder for additional meetings, as required.

DELIVERABLES

Meeting attendance

TENTATIVE PROJECT SCHEDULE

See attached overall project timeline (Attachment 2).

CONSULTANT INSURANCE REQUIREMENTS

DUE IMMEDIATELY (BY THURSDAY, NOVEMBER 10, 2005). See Attachment 3.

DEADLINE FOR PROPOSALS

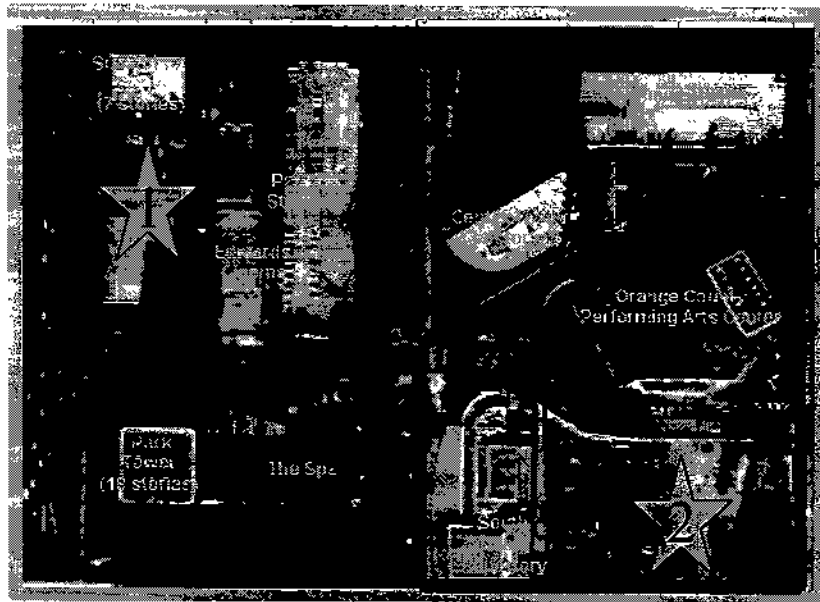
Proposals due by 12:00 NOON on Thursday, November 17, 2005.

CONTACT:

Claire L. Flynn, AICP
Senior Planner
City of Costa Mesa
77 Fair Drive
P.O. Box 1200
Costa Mesa, CA 92628-1200
(714) 754-5278

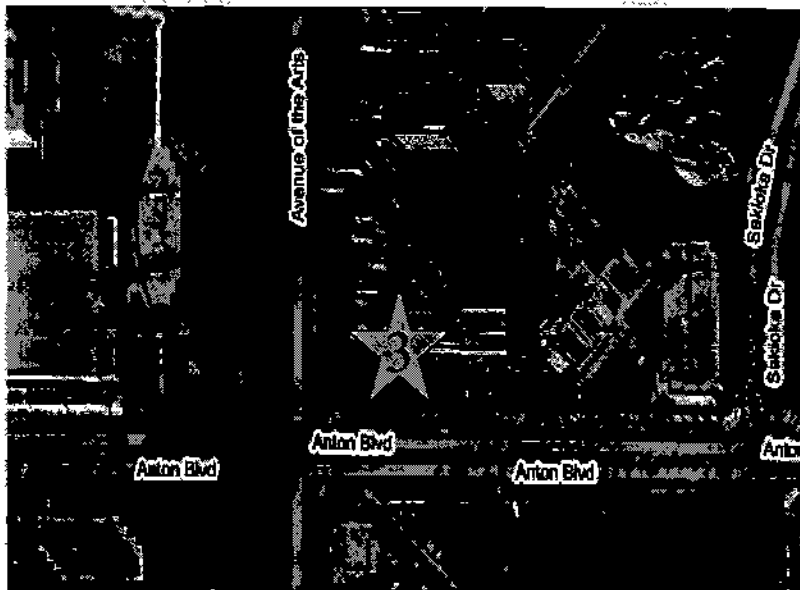
ATTACHMENT 1

Project Description

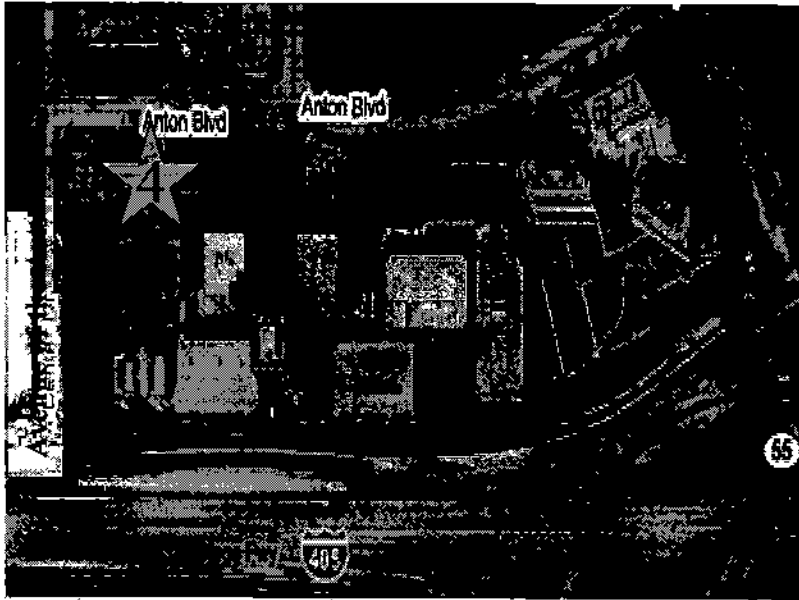


1. Segerstrom Town Center (owned by South Coast Plaza entity) is located on **3400/3420 Bristol Street** at the southeast corner of Sunflower Avenue and Bristol Street. There are two proposals for this site. First, 41 residential condominium units are proposed on the upper floors of an unbuilt hotel entitlement. Second, the applicant wishes to establish an option to substitute high-rise residential uses for all or part of an unbuilt office entitlement at 3420 Bristol Street. All proposed structures would not exceed a maximum height limit of 315 feet.

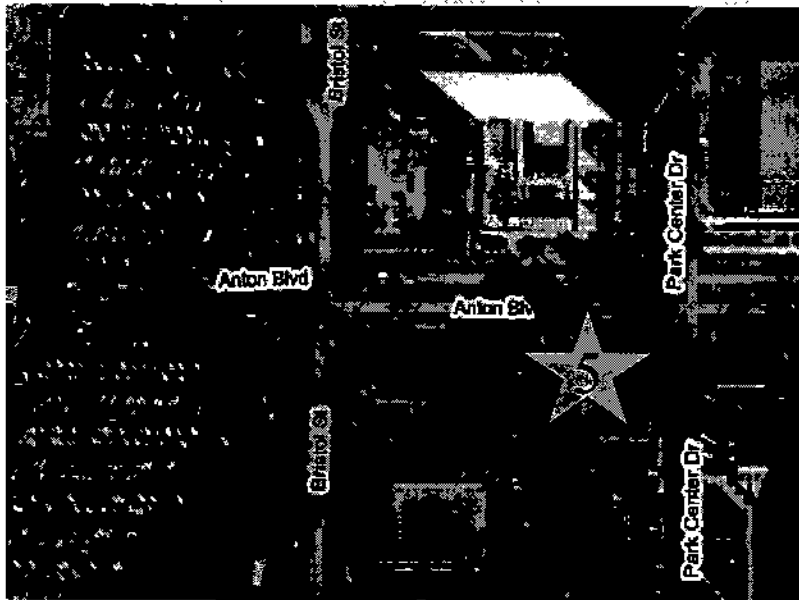
2. Orange County Museum of Art site (owned by OCPAC entity) is located on **605 Town Center**. Up to 140,000 sq.ft. of museum and ancillary commercial uses on three to four floors are proposed. Up to 80 residential condominium units are proposed in a high rise building atop roughly one-third to one-half of the museum building. The tallest point of the tower would not exceed a maximum height limit of 315 feet. At least one level of underground parking is proposed. Amount of parking supply has not been determined.



3. The Lakes Pavilions Site (owned by Fifield Properties) is located at **580 Anton Boulevard** on the corner of Anton Boulevard and Avenue of the Arts. Two residential high rise buildings are proposed in place of the proposed demolition of an existing retail center. The two high rises will provide 250 total units at a maximum building height of 280 feet. A 244,688 sq.ft. parking structure will provide 525 parking spaces.



4. South Coast Metro Center (owned by Stockbridge/South Coast/Sakioka/Craig entities) is located between **475 - 595 Anton Boulevard** at the southeast corner of Anton Blvd. and Avenue of the Arts. A mixed-use development is proposed in the place of an unbuilt hotel entitlement (300 room hotel) and the proposed demolition of 16,700 sq.ft. of restaurant uses (2 restaurants). The proposed project is configured into two Pods with high rise "Symphony Towers." Pod #1 and #2 each consist of a 24-story residential high rise building (270 feet), 6-story midrise building, and 5-story parking structure. A 6,000 sq.ft. ground-floor retail component is also proposed in Pod #1. The proposed project will provide a total of 484 units and 1172 parking spaces.



Pacific Arts Plaza (owned by Maguire Properties) is a sub-area of South Coast Plaza Town Center located at **675 Anton Boulevard** at the southeast corner of Anton Blvd. and Bristol Street. An existing 5-story office building is proposed to be demolished, and a 30 story (315 feet) residential high rise building is proposed. This building will provide 240 – 300 units and 550 parking spaces.

Residential High Rises Summary

SUMMARY TABLE OF PROPOSED PROJECTS

South Coast Metro Center - 475-595 Anton Boulevard

Building	Project Component	Building Height & Gross Feet	Residential	Bedroom Mix (preliminary)	Parking
West Tower [Pod 1]	High Rise #1	24 Stories, 270 feet 504,042 gross sq. ft., (inclusive 6,000 sq. ft. retail).	242 units	30% one-bedroom 70% two-bedroom Units range in size from 1,100 sq. ft. to 2,000 Sq. ft.	588 spaces located in one structure of 269,621 gross sq. ft.
East Tower [Pod 2]	High Rise #2	24 Stories, 270 feet 505,277 gross sq. ft. of	242 units	30% one-bedroom 70% two-bedroom Units range in size from 1,100 sq. ft. to 2,000 sq. ft.	584 spaces located in one structure of 234,616 gross sq. ft.

The Lakes Pavilions Site -- 580 Anton Boulevard

Building	Project Component	Building Height	Residential	Bedroom Mix	Parking
West	High Rise #1	21 Stories/280ft	125 units	(25) one-bedrooms, (88) two-bedrooms, (12) three-bedrooms.	262 spaces
East	High Rise #2	21 stories/280ft	125 units	(25) one-bedrooms, (87) two-bedrooms, (13) three-bedrooms	263 spaces

Pacific Arts Plaza -- 675 Anton Boulevard					
Building	Project Component	Building Height	Residential Units	Bedroom Mix	Parking
A	High Rise	30 stories / 315 ft	240-300 units	500-1,000 sq. ft. studios 700-1,300 sq. ft. one- bedrooms 900-3,000 sq. ft. two- bedrooms 1,500-4,500 sq. ft. three bedrooms	550 spaces
Segerstrom Town Center -- 3400 & 3420 Bristol Street					
	Component		Units		
3400		315 ft maximum	Up to 41 units	TBD	TBD
3420		315 ft maximum	TBD		
Orange County Museum of Art -- 605 Town Center Drive					
	Component		Units		
605		315 ft maximum	Up to 80 units	TBD	TBD

ATTACHMENT 2

Overall Project Timeline

Tentative Project Timeline

Work Activity		Deliverables	Date
Applicants submits Planning Applications	<ul style="list-style-type: none">Completed planning application packets for: General Plan amendment, Preliminary Master Plan, North Costa Mesa Specific Plan amendmentProject DescriptionsPreliminary Traffic Studies & Parking Studies		Nov. 8, 2005
City issues Request for Proposals	<ul style="list-style-type: none">Request for Proposals from Environmental Consultants: (1) Ultrasystems, Culbertson Adams, and (3) URS GreinerConsultant Interviews on November 18, 2005		Nov. 9, 2005 Nov. 18, 2005
City awards contract	<ul style="list-style-type: none">Professional Services Agreement sent to all applicants with apportionment of EIR Costs		Dec. 6, 2005
Applicants submits Project Plans	<ul style="list-style-type: none">If a "Preliminary Master Plan" for a conceptual project is being submitted, only a site plan is required at this time.If a "Final Master Plan" for a specific development project is being submitted, Color Architectural Renderings, Site Plan, Floor Plan, & Elevations are due with the submittal.		Early Feb, 2006
City/Consultant issues Notice of Preparation	<ul style="list-style-type: none">Notice of Preparation (NOP) of environmental document to adjacent Cities, interested parties, county and state agencies, utility companies		Early January 2006
Consultant prepares EIR	<ul style="list-style-type: none">Environmental Analysis –Screencheck EIR due – March, 2006		Dec – March 2006
Screencheck EIR due	<ul style="list-style-type: none">Applicants provide comments on Screencheck EIR		Mid March
Draft EIR	<ul style="list-style-type: none">Draft EIR circulated for 45-day public review period		Mid April – May 30, 2006
Consultant prepares Responses to Comments	<ul style="list-style-type: none">Responses to Comments document through public review period to Mid June		Mid June
Planning Commission AND Airport Land Use Commission (ALUC) Public Hearings	<ul style="list-style-type: none">Public Hearings held concurrently for Planning Commission and ALUCApplicants in attendance.		June 2006
City Council Public Hearings	<ul style="list-style-type: none">City Council Public HearingsFinal EIRApplicants in attendance.		July 2006
General Plan amendment, Zoning Code amendment, North Costa Mesa Specific Plan amendments, Preliminary (or Final) Master Plans become effective			August/September 2006

ATTACHMENT 3

Insurance Requirements

The insurance certificates demonstrating compliance with the following requirements are due immediately for the City Attorney's review.

Consultant shall obtain and maintain during the life of this Agreement all of the following insurance coverages:

- (a) Comprehensive general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.
- (b) Automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate.
- (c) Workers' compensation insurance as required by the State of California.
- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Consultant shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

The comprehensive general liability insurance policy shall contain or be endorsed to contain the following provisions:

- a) Additional insureds: "The City of Costa Mesa and its elected and appointed boards, officers, agents, and employees are additional insureds with respect to this subject project and contract with City."
- b) Notice: "Said policy shall not terminate, nor shall it be cancelled, nor the coverage reduced, until thirty (30) days after written notice is given to City."
- c) Other insurance: "Any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."

Consultant shall provide to City certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, prior to performing any services under this Agreement.

EXHIBIT B

RESPONSE AND SCOPE OF SERVICES



CITY OF COSTA MESA

P.O. BOX 1200 • 77 FAIR DRIVE • CALIFORNIA 92628-1200

DEVELOPMENT SERVICES DEPARTMENT

**FOR ATTACHMENTS NOT INCLUDED IN THIS
REPORT, PLEASE CONTACT THE CITY CLERK'S
OFFICE AT (714) 754-5121**